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**American Rental Association**

**Comment on Finalization of Amendments to**

 **Portable Equipment Registration Program and Air Toxic Control Measure**

**Air Resources Board**

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**By**

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**Introduction:**

The American Rental Association (ARA) represents approximately 4,800 member companies in all 50 states and Canada that are engaged in renting equipment, tools, and party and event goods and services to their customers. We appreciate the opportunity to provide our comments to the members of the Air Resources Board (ARB) on the proposed amendments to the Portable Equipment Registration Program (PERP). Rental transactions are typically carried out using a rent-to-rent contract where the rental company maintains the ownership of the equipment. This is in contrast to rent-to-own and leasing arrangements that usually involve the transfer of ownership. The rental business is a service business that is highly competitive with many firms competing for the public’s business. As a result of this competition among rental firms, the equipment that is offered for rent is relatively new and very well maintained. The rent-to-rent business model provides the background for ARA’s comments on the amendments to PERP.

1. **Inventory and Health Effects:**
	1. **PERP Inventory:**

Appendix I provides an Emissions Inventory update which is used to provide environmental and cost justifications for the PERP program. The data provided in this appendix are totally inadequate to evaluate ARB’s claim of environmental and cost benefits. Furthermore, the PERP website provides no easily accessible data regarding the PERP fleet makeup, activity, load, fuel consumption and other data that could be used to make an independent analysis. The entire database should be made available in an easily understood format such as Excel.

With regard to projecting inventory in the section ***“Growth in Equipment Population and Activity”***, Staff states that “the portable equipment population in California is used across an extremely wide variety of industries, including construction, industrial, commercial, drilling, equipment rental, energy generation, and many others. The broad application of these engines makes projecting equipment population growth for a specific industry both difficult and prone to significant error”. However, since these segments might grow at different rates, and definitely utilize different equipment, using an average growth rate for the fleet based upon a macroeconomic factor could also be prone to significant error. Did ARB Staff make any effort to survey these industry subgroups to better understand portable equipment use? Because the U.S. Energy Information Administration (EIA) diesel fuel survey data categorizes fuel sales in a similar manner, it would then be possible to validate the bottom up inventory analysis using a top down fuel based analysis similar to that done in the Off-Road In-Use program. That program found that a bottom up inventory resulted in about five-times more fuel used and thus emissions generated than could be supported by the detailed surveys conducted by EIA. Since the emissions benefits of the Proposal are so small compared to the straight business as usual case, any adjustment in inventory that results from a more granular analysis that also closes the fuel balance might have a very significant affect on the cost of abatement of pollutants.

* 1. **Health Risk Evaluation for Diesel Particulate Emissions:**

Appendix G provides a “Health Risk Evaluation” in the South Coast AQMD and concludes that “Using the earlier assumption that the South Coast Air Basin would represent an upper bound estimation of the risks statewide, it is reasonable to conclude that the potential cancer risk associated with portable diesel PM engine emissions under the Proposed Regulatory Amendments would also achieve an earlier potential cancer risk reduction statewide compared to the BAU scenario”.

Figure 1 in Appendix G shows that the calculated Excess Risk from Portable Engine Emissions in the South Coast falls from about 50 per million population to about 10 per million from 2012 to 2031. This assumes the Inventory in the South Coast AQMD is correct. But, the Cancer Risk reported in any given year is based upon a constant exposure for 70 years, which due to ARB regulatory action and EPA rules cannot happen. According to this appendix, cancer risk is a linear function of exposure and the correct application of this approach would include the time integrated exposure. In fact, the risk between 2031 and 2082 would be constant at about 10 per million regardless of scenario with no new action after 2031 due to regulation or change in diesel utilization, or would continue to decline with additional regulation. Factually today, the Excess Risk is not materially impacted by any PERP scenario because PERP emissions have followed the *Business as Usual* scenario. All scenarios between 2017 and 2031 provide little differences in emissions. Thus, the integrated risk is essentially independent of scenario.

* 1. **Analysis**

At the same time, protection of Air Quality from the impact of large projects is a real concern. The purpose of all of the ARB fleet control measures is to comply with State Implementation Plan (SIP) requirements and protect the local public health. ARA supports the concept that project specific analysis like AQIA (PERP 2455(a)(3)) in appropriate cases should be conducted. Such a requirement would allow contractors to assemble fleets of Tier 4F and possibly Tier 4I equipment with sufficiently low emission factors that would ensure SIP compliance.

We do have a concern with the portion of (3) that requires “Except for Tier 4 final engines, statewide registration shall not be valid at any location where the AQIA demonstrates that the operation of the registered engines will cause a violation of an ambient air quality standard.” We do not understand this requirement. Upon modification and assuming the revised AQIA demonstrates that a certain fleet makeup will pass muster under a SIP, why would a District have the right or need to require that an engine legally registered in the State program be disallowed. This is in opposition to the purpose of PERP. This would put equipment rental companies, owners of the cleanest equipment, under a competitive disadvantage because these businesses have equipment which can be moved to meet demand, and thus do not generally permit within a given district.

While the previous discussion might be construed as supporting the *Business as Usual* approach, ARA believes that the State is better served with the Proposed Rules. The reason for this is that our members may sell their used equipment to the construction contractors. Equipment rental businesses are generally owners of high Tier 4 final and interim equipment. Our fleet turnover rates attempt to maximize our returns on investment based upon net investment in equipment (first cost minus resale) plus maintenance costs which escalate with time. Encouraging contractors to purchase higher Tier used equipment results in lower net investment and thus potentially more rapid rental fleet turnover. Accelerated turnover can also be affected by AQIA to the extent that AQIA causes more Tier 4I and 4F equipment to be used in large projects. Contractors might be likely to rent more Tier 4 rather than use their lower Tier equipment. Higher utilization of rental equipment promotes more rapid turnover. It should be noted that unlike much of the construction industry, rental companies possess a very large amount of experience with Tier 4 equipment, both positive and negative.

1. **Most Stringent Definition:**

The requirements of the regulations include the term “Most Stringent” with regards to engine certification. The term “Most Stringent” is used in both the ATCM and Regulatory Order. This statement is undefined and yet very important to the implementation of PERP as to how it interacts with ATCM definitions (39) through (43). Staff should include a definition of “Most Stringent” in both proposals.

1. **Temporary Registration:**

**ARA businesses continue to indicate that the time to obtain a registration of new equipment is excessive resulting in considerable lost income as new equipment sits idle in the yard. This has been as issue since the regulation was first approved and implemented.** Part of the reason for this proposals development was because businesses could not afford to meet the PERP requirements. As of November 2017, ARA member businesses tell us that the PERP registration process is still taking 60 to 90 days. Member businesses ask why PERP equipment registrations cannot act like DOORS registrations in the Non-Road program where they can get a EIN immediately.

The new language in section 2458(g) designed to help with this issue is as follows:

*“Upon receiving an application for a* ***Tier 4*** *final engine or a certified spark-ignition engine that meets the most stringent standards, the Executive Officer shall issue a* ***temporary*** *registration for the engine at the request of the applicant. The Executive Officer shall notify the applicant in writing or electronic notification that the engine has been given temporary registration. The written or electronic notification shall include a temporary registration certificate which will expire no later than 3 months from the date of issuance.”*

However, 2458(e) still maintains that *“The Executive Officer shall issue or deny registration within* ***90 days*** *of the date receipt of a complete an application is deemed complete.”*

ARA has several issues with (e) and (g).

* Section 2458(g) includes no time frame for issuing a temporary registration once a complete registration application has been submitted. So does 90 days still apply? We must admit that our trust in the fairness and promptness of the system is low because it is not the first time it has been addressed[[1]](#footnote-1).
* For large fleets, there is an option to manage their fleet emission factor through averaging. (ATCM 93116.3(2)). If they hold sufficient low emitting equipment, they may elect to buy lesser Tier units than 4F. They should not be penalized with a long delay because they are buying lesser but allowed Tier.
* We see no reason for such a long processing time. All engines being registered carry a Federal Certification with a family name descriptor which defines the Tier and a nameplate which provides information such as the engine SN and horsepower. Determining the validity of a VDECS add-on for example is a non issue. Determining whether the engine complies with the requirements of the program should not be difficult because ARB must know the exact meaning of the information requested in the application. Furthermore, arranged inspection (and testing) has become moot. Field enforcement is important but that function should be paid for through fines. The PERP fleet is on the order of only 30,000 engines. If the turnover is 12 years, a very optimistic number, this amounts to a mere 7 new units introduced into the fleet per calendar day. Assuming all are registered with the State, at approximately $400 per unit per year fee, annual revenue to PERP is approximately $12,000,000 due to registration which is more than enough to cover staff to promptly handle the few new engines registered annually. This is especially true if the submittal is electronic. Our question is simple; what can possibly cause a 60 to 90 day delay with respect to review?
1. Definition of an Agent

This issue is not a part of the proposal. Section 2463(b) *“A holder of registration may be subject to a suspension or revocation action pursuant to this section based upon the actions of an agent, employee, licensee, or other authorized representative.”* The PERP Rule does not define who these individuals might be with respect to an equipment rental business. For example, a renter might use an agent to represent him to rent equipment on his behalf. These terms must be defined in the rule.

1. Equipment Throughput Reports

This issue is not part of the proposed changes but is associated with proposed language changes in the section and ARA has commented on the issue previously, with unsatisfactory resolution of the issue. 2458(b) of the PERP rule requires that Rental Companies provide logs to record Equipment Unit throughput and location. Specifically, 2458(b)(5) states that

*“The renter of a registered engine or equipment unit shall maintain records in the written log specified in section 2458(b)(2) for each rental or lease transaction that include the following:*

*(A) For equipment units subject to a daily and/or annual operational limitation, daily and/or annual records as appropriate of process throughput. If the equipment unit is subject to the requirements of section 2457(b)(3), daily throughput shall be the sum of measurements of material introduced into the equipment unit by weight. These measurements shall be taken at the initial loading point;*

*(B) For equipment units, the specific location (i.e. street address and city; or county and UTM coordinates; or other location indicator) Appendix B 29 where the registered equipment unit is located while out on rent and the date shall be recorded each time the equipment unit is brought to a different location; and*

 *(C) For engines, the specific location (i.e. street address and city; or county and UTM coordinates; or other location indicator) and date where the registered engine is located while out on rent shall be recorded no less than once a month;. (c) For TSE, each military installation shall provide the Executive Officer an anner shall maintain records*

While there is some confusion regarding the meaning of shall, Merriam Webster indicates that when “shall” is used in laws, regulations, or directives it is to express what is mandatory. ARA members experience is that renters do not generally comply, and many do not return the logs when they return the equipment. Equipment rental companies have no authority to enforce State Rules on customers.

However:

2458(e) requires *“The owner of a registered equipment unit shall provide the Executive Officer an annual report signed by the responsible official, in a format approved by the Executive Officer, by March 1 of each calendar year containing all of the following information: (1) the reporting year; (2) the registration number of each registered equipment unit; and (3) annual summaries of the total process weight or throughput for each district in which the registered equipment unit was operated”.*

ARA members have expressed concern that if they are unable to produce records related to (3), they could have their registration revoked. The Board should instruct staff to resolve this issue. The responsibility for enforcing this requirement should lie with the District Inspectors.

1. ***At the March 22, 2007 Board Meeting*** *ARA provided written and verbal testimony regarding the time it takes to register a piece of equipment. Our written comment was as follows:*

***In Service Date:*** *ARA has commented to Staff and the Board throughout this process that section 24549(c) is a burden and imposes significant financial hardship on businesses that must pay financing costs on equipment while waiting to receive a registration document.*

*The Board should instruct staff to modify the PERP regulation and the ATCM to alleviate the hardship.*

*The PERP regulation states that:*

*“****After*** *obtaining registration in accordance with this article, an owner or operator of the registered engines or equipment units:*

*(2) may operate within the boundaries of the State of California so long as such registered engines or equipment units comply with all applicable requirements of this article and any other applicable federal or State law.*

*PERP allows staff 90 days to issue a registration after receipt of an application. ARB staff has indicated to ARA that their current screening process of incoming applications allows them to determine if an application has a high probability of being meritorious nearly immediately.*

*Assuming that purchased engines meet the most current Tier provision and the various allowances provided, there is no environmental harm in allowing engines to be put in service* ***immediately*** *upon delivery and submittal of a meritorious registration application.*

**In our oral testimony, we provided more details regarding the impact of a long delay in awarding a registration.**

We had learned in 2006 that rental dealers who put equipment into service after they had submitted a paid registration application, but before they received the final registration documents from ARB were subject to enforcement actions. Our efforts to request changes in PERP by engaging ARB staff were ineffective. ARB staff told us that they could not implement any kind of “temporary registration program” or any sort of “enforcement shield” because the AQMDs would not allow it. After a lot of frustrating discussions, ARA took this issue to the ARB Board at a meeting of the full Board on March 22, 2007. Our concerns had also been given voice by several members of the California legislature who ARA of California members visited during their legislative day on March 6, 2007. *Members of the Board called staff to task for this policy and directed staff to implement a temporary registration that would be effective upon filing of a registration and payment of fees.* [↑](#footnote-ref-1)